



The Commonwealth of Massachusetts

**DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY**

MEMORANDUM

TO: D.T.E. 03-60 Service List
(via email and regular mail)

FROM: Paula Foley, Assistant General Counsel
Jesse Reyes, Hearing Officer

RE: Procedural Schedule; Impairment Issues; Hot Cut Issues

DATE: November 24, 2003

I. PROCEDURAL SCHEDULE

Attached to this memorandum is the procedural schedule for the remainder of the Department's nine-month proceeding in docket D.T.E. 03-60. Please note that we have divided the proceeding into two tracks: Track A addressing impairment issues, and Track B addressing hot cut issues. Please also note that Jesse Reyes has been assigned as Hearing Officer for Track B; Paula Foley will remain as Hearing Officer for Track A. Please include Jesse Reyes on all further communication in this docket. His contact information is as follows:

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II. IMPAIRMENT ISSUES

Parties to this proceeding are reminded that on October 3, 2003, Verizon Massachusetts ("Verizon") filed with the Department a letter indicating that Verizon would not be contesting the FCC's national determination of impairment with regard to loops, transport, or switching in this proceeding on the basis of operational or economic impairment factors (October 3, 2003 Letter from Bruce Beausejour to Secretary Cottrell at 1 ("VZ October 3 Letter")). Rather, Verizon indicated that it would confine its case in Massachusetts to whether or not the FCC's

“triggers” have been met for those elements (VZ October 3 Letter at 1-2).¹ In other words, for the purposes of this proceeding, Verizon is, in effect, conceding the point that impairment exists in the markets that do not satisfy either of the FCC’s triggers.² Verizon’s direct case, filed with the Department on November 14, 2003, is consistent with this approach.

We conclude that this approach narrows the impairment analysis required in this proceeding. However, consistent with the parameters of a “triggers case,” the FCC has indicated that, even if the self-provisioning trigger is satisfied, if certain “extraordinary circumstances” are present in a particular geographic market, loop location, or transport route, such that all future competitive entry is foreclosed, then a state commission may petition the FCC for a waiver of the application of the self-provisioning trigger until the exceptional barrier to entry no longer exists. Triennial Review Order at ¶¶ 336, 411, 503.³

III. HOT CUT ISSUES

In the Hot Cut phase of this proceeding, the Department will also investigate Verizon’s proposed WPTS process, for purposes of examining and adopting a more efficient manual hot cut process for non-batch hot cuts. In D.T.E. 01-20, the Department stated that it would defer review of Verizon’s WPTS process to this investigation. See UNE Rates, D.T.E. 01-20, at 3 n.4, Letter Order on Conversent Communications’ Motion for Reconsideration (August 6, 2003); Hearing Officer Notice (March 4, 2003). Accordingly, Verizon is directed to file by December 17, 2003, proposed testimony (including a detailed description of the WPTS process), rates with supporting cost studies, and tariff provisions for rates, terms and conditions.

If you have any questions, please contact Paula Foley at (617) 305-3608 or Jesse Reyes at (617) 305-3735.

¹ In the Triennial Review Order, the FCC established two “triggers” (a “self-provisioning trigger” and a “competitive wholesale facilities trigger”), which, if satisfied, would require a finding of “no impairment,” and, thus, an end to unbundling of the specific element in the relevant market.

² According to the FCC, Verizon may seek to raise these arguments in subsequent impairment reviews pursuant to 47 C.F.R. § 51.319(d)(5)(ii) and related provisions.

³ The FCC suggests that lack of collocation space would be an example of an “exceptional barrier to entry” in the switching impairment analysis (Triennial Review Order at ¶ 503), and suggests that a long-term municipal moratorium on granting rights-of-way would be a similar example in the loops and transport impairment analyses (*id.* at ¶¶ 336, 411). It is reasonable to conclude from the FCC’s examples that “exceptional barriers” are not the same as the specified factors that the FCC indicated are part of a full economic and operational impairment analysis.